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Third Court of Appeals
P.O. Box 1254
Austin, TX 78711

May 15, 2022

Greg Abbott, et al v. Jane Doe, et. al
Cause No: 03-22-00126-CV
Amicus Brief

Dear Honorable Justices of the Third Court of Appeals:

I am not being compensated by anyone for the preparation, writing and filing of this amicus brief.

I solely write to preserve and protect the fairness of the Texas administrative system in general, and the act of rule making, in particular.

NOTE: This Amicus was filed in the Texas Supreme Court today, but is being filed here due to this Court's continuing jurisdiction over this litigation. RLB

Enclosed are recently discovered facts, and the applicable law, that the Office of Attorney General has not informed this Court of its existence and applicability to the resolution of the present controversy.

The Human Resource Code provides that the DFPS shall have one Commissioner, who shall serve a two-year term by appointment of the Governor with the two-thirds approval of the Senate, *Section 40.027(a)*. The Commissioner is vested with all powers to administer the DFPS as well as develop and implement all policies and rules of the DFPS, *Section 40.027(b)-(e)*. Therefore, Commissioner Jamie Masters "is" the DFPS, and she is the sole state officer who decides how *Chapter 40 of the Human Resource Code* will be interpreted and applied. The enabling statute ends with the statement that, notwithstanding any

other law, it is the Commissioner who shall adopt all rules and policies of the DFPS, *Section 40.027(e)*.

Commissioner Jamie Masters was appointed by Governor Abbott and duly approved by the Senate for a two-year term that commenced on December 2, 2019, and that expired either on September 1, 2021, (states her website) or December 1, 2021 (states the statute). **Governor Abbott has not reappointed her nor has he appointed any other person to assume her office. However, he has allowed her, upon his own authority, to illegally continue to hold the office of Commissioner and invalidly exercise all the statutory powers of the office. He labels these officers as “Holdover Officers.”** (*For a full analysis of this subject, see Beal, “Texas: A Weak Governor State or Is It?”, 52 St. Mary’s L.J. 263, 277-83 (2021).*

Governor Abbott has no power to do so for the Texas Constitution provides that the expiration of a term of office constitutes a vacancy, *art. IV, Section 12(i)*. A vacancy is the quality, state or condition of being unoccupied in reference to an office, *Black’s Law Dictionary* (19th Ed. 2019). She may only lawfully continue to hold the office by a formal reappointment by Governor Abbott with the two-thirds approval of the Senate, which has not occurred, *see Section 40.027(a)*.

Therefore, all acts taken by Commissioner Jamie Masters are null and void: (1) adopting KP-0401 on or after 2/18/22 and (2) which was followed by her ordering or directing her employees to comply with KP-0401 by commencing investigations of the parents of transgender minor children who are seeking medical services to deal with their condition. She simply did not have, nor does she currently have the legal authority to act.

What is so legally shocking about this scenario is that since Commissioner Jamie Masters has no set term and no legal right to hold the position except due to the unlawful discretion of Governor Abbott, **HE HAS TOTAL CONTROL OVER HER ACTIONS FOR SHE MAY BE “FIRED” BY HIM AT ANY TIME!**

DID HE WANT HER TO APPROVE AND IMPLEMENT KP-0401 IMMEDIATELY? THE EVIDENCE BEFORE THIS COURT ESTABLISHES THAT FACT ABSOLUTELY.

DID COMMISSIONER MASTERS HAVE ANY LEGAL PROTECTION TO INDEPENDENTLY REFUSE THAT ORDER? ABSOLUTELY NOT!!!

This is an issue of first impression, but Governor Abbott will undoubtedly assert he has a clear answer that he had a legal right to allow her to continue to lawfully serve. On June 6, 2019, his office provided this amicus with a list of **418 unlawful officers, some of whom had illegally held their positions for 8 years after the expiration of their term**, *Beal, Texas: A Weak Governor State or Is It?*, 52 St. Mary's Law Journal 263, 281 (2021). Thus, this constitutional violation is at the level of a pandemic in the Governor's office.

The Governor's formal position has never been publicly stated, but it appears he is relying on *Texas Constitution, art. XVI; Section 17(a)* of the Texas Constitution that states: "All officers shall continue to perform the duties of their office until their successor shall be qualified." They are commonly called "holdover" officers. **The Governor has clearly taken the position that if he does not renominate or nominate someone new, the sitting officers can serve at his pleasure as long as he remains in office.**

Based on this interpretation, there will never be a vacant office by the expiration of its term, but all vacancies will only occur by the sole discretion of the Governor. This constitutional interpretation thereby wholly avoids statutory terms and bothersome Senate approval. And the best part, the Governor has total control over their decision-making process for his disapproval of their actions will simply result in his termination of their term for they obviously have no legal right to continue to exercise those powers.

This interpretation is the complete antithesis of the framers' intent to prevent the Governor from having total control over the agencies of this State. Thus.....no terms, no need for senate approval, just keep the boss happy, who happens to be the Governor or you will be sacked the same day for no reason given!

That is the scenario that Commissioner Jamie Masters worked under when she "independently" determined whether KP-0401 was consistent with her regulatory scheme and whether she should order her employees to apply it to the parents of transgender minor children. It is illegal, a fraud upon the people of this state and blatantly unconstitutional.

Sincerely,
/s/ Ron Beal
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CERTIFICATE OF COMPLIANCE

I certify that this document was produced on a computer using Microsoft Word and contains 1068 words, as determined by the computer's software's word count function, excluding the sections of the document listed in Texas Rules of Appellate Procedure 9.4(i)(1).

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I hereby certify that a true and correct copy of the foregoing document has been served on May 15, 2022, by e-file and/or electronic mail in accordance with the Texas Rules of Civil Procedure to the following:

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